SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF WESTCHESTER
- - - - - - - - - - - - - - - - - - - X

FOX VARIAN, Index No. 61150/2023

Plaintiff,

-against-

KENNETH EINHORN, PhD, CARMEL PSYCHOLOGICAL ASSOCIATES, P.C., SIMON H. CHIN, M.D. and CAREMOUNT MEDICAL, P.C.,

Defendants.

- - - - - - - - - - - - - - - - - - - X

December 7, 2023
11:06 a.m.

CONTINUED EXAMINATION BEFORE TRIAL of the Plaintiff, FOX VARIAN, taken pursuant to Order, held via teleconference before a Notary Public of the State of New York.

* * *

ORIGINAL

A P P E A R A N C E S:

FIEDLER DEUTSCH, LLP,
Attorneys for Plaintiff
81 Main Street
White Plains, New York 10601

BY: JAVONNE HALL, ESQ.
E-mail: Jhall@fiedlerdeutsch.com

FURMAN KORNFELD & BRENNAN LLP,
Attorneys for Defendants
88 Pine Street, 32nd Floor
New York, New York 10005

BY: TRACY KATZ, ESQ.
E-mail: Tkatz@fkblaw.com

MARTIN CLEARWATER & BELL LLP,
Attorneys for Defendants
245 Main Street
White Plains, New York 10601

BY: VALERIE RUOCCO, ESQ.
E-mail: Valerie.ruocco@mcb.com

* * *

S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties herein, and in compliance with Rule 221 of the Uniform Rules for the Trial Courts:

THAT the parties recognize the provision of Rule 3115 subdivisions (b), (c) and/or (d). All objections made at a deposition shall be noted by the officer before whom the deposition is taken and the answer shall be given and the deposition shall proceed subject to the objections and to the right of a person to apply for appropriate relief pursuant to Article 31 of the CPLR.

THAT every objection raised during a deposition shall be stated succinctly and framed so as not to suggest an answer to the deponent and, at the request of the questioning attorney, shall include a clear statement as to any defect in form or other basis of error or irregularity. Except to the extent permitted by CPLR Rule 3115 or by this rule, during the course of the examination persons in attendance shall not

make statements or comments that interfere with the questioning.

THAT a deponent shall answer all questions at a deposition, except (i) to preserve a privilege or right of confidentiality, (ii) to enforce a limitation set forth in an order of a court, or (iii) when the question is plainly improper and would, if answered, cause significant prejudice to any person. An attorney shall not direct a deponent not to answer except as provided in CPLR Rule 3115 or this subdivision. Any refusal to answer or direction not to answer shall be accompanied by a succinct and clear statement of the basis therefore. If the deponent does not answer a question, the examining party shall have the right to complete the remainder of the deposition.

THAT an attorney shall not interrupt the deposition for the purpose of communicating with the deponent unless all parties consent or the communication is made for the purpose determining whether the question should not be answered on the

grounds set forth in Section 221.2 of these rules and, in such event, the reason for the communication shall be stated for the record succinctly and clearly.

THAT failure to object to any question or to move to strike any testimony at this examination shall not be a bar or waiver to make such objection or motion at the time of the trial of this action, and is hereby reserved; and

THAT this examination may be signed and sworn to by the witness examined herein before any Notary Public, but failure to do so or to return the original of the examination to the attorney on whose behalf the examination is taken shall not be deemed a waiver of the rights provided by Rules 3116 and 3117 of the CPLR, and shall be controlled thereby, and

THAT certification and filing of the original of this examination are waived; and

THAT the questioning attorney shall provide counsel for the witness examined herein with a copy of this examination at no charge.

- Fox Varian -

F O X V A R I A N,

the witness herein, having been first duly sworn by Christy J. Rockower, a Notary Public of the State of New York, was examined and testified as follows:

oOo

THE REPORTER: Will the witness please present a government issued ID by holding it up to the camera for identification.

(Witness complies.)

EXAMINATION CONDUCTED BY MS. RUOCCO:

Q Would you please state your name.

A Fox Varian.

Q What is your address, please?

A 42 Jordan Drive, Patterson, New York 12563.

Q Good morning, Fox. As you may recall my name is Valerie Ruocco. I'm an

- Fox Varian -

attorney with the law firm of Martin Clearwater & Bell and we represent Dr. Simon Chin and Caremount Medical.

I'm going to continue to ask you questions just like we did when we were here last week. The same instructions will apply. Please give me a minute to get my question out before you give you answer. All of your answers have to be verbal. If you need to take a break at any time for any reason just let us know and, you know, we'll accommodate you. I just ask that we take a break so there's no break in the questioning, meaning I've asked my question, you've given your answer, and then we take our break.

If you don't understand my question in any way, please don't answer it, just let me know that you didn't understand the question and I will change it.

Also if technology cuts out, you know, don't answer a question, just let us know that the technology is failing and

we'll reset and re-ask the question. Do you understand my instructions?

A Yes.

Q Prior to seeing Dr. Simon Chin, did you ever consult with any plastic surgeons?

A No, I did not.

Q Now, at our last deposition you indicated that there was a three-year wait list to be seen by a plastic surgeon. How did you learn that there was a three-year wait list?

A I don't know that it was exactly three years but it was, more than a year, like multiple years. I called around and, like, I called other surgeons.

Q What other surgeons did you call?

A I think Bluebond-Langer something like that. She's with NYU, I believe.

MS. KATZ: Can I get a spelling for that?

THE WITNESS: Bluebond,

- Fox Varian -

B-l-u-e-b-o-n-d, and then I believe it was L-a-n-g-e-r or something like that.

MS. KATZ: Okay. Thank you.

Q Is that one doctor that you're saying or you called Dr. Bluebond and Dr. Langer?

A One name, hyphenated.

Q Did you call any other surgeons other than Dr. Bluebond-Langer?

A I don't remember.

Q How did you come up with her name?

A She's pretty well known in the field. You look up, quote, "top surgery" and she's a name that comes up.

Q When you say you look it up, are you referring to, like, a regular Google search or is it --

A Yes.

Q -- a support group or something else?

A Google search.

- Fox Varian -

Q Now, when you called the surgeon at NYU did you actually speak to, say, her nurse or someone about surgery that you were desiring?

A I have no idea. I just, I don't really remember the conversation, I just remember being told there was a long wait list.

Q Do you recall contacting any other plastic surgeons prior to seeing Dr. Simon Chin for any reason?

A Surgeons, no.

Q Since you last saw Dr. Chandler, have you contacted any healthcare provider to discuss reconstruction?

A No.

Q At your last deposition you had indicated that reconstruction would be very expensive. Did you do any research to learn that fact?

A Yeah, I did. I believe one of the higher end costs was like 30,000 or something like that was a figure I saw. So, yeah, I looked.

- Fox Varian -

Q Is that a quote that you received from a doctor's office or something you saw as well?

A Internet.

Q Did you ever contact any type of provider for a quote on reconstructive surgeon?

A No, I haven't.

Q Do you currently wear any type of garment that would give the allusion that you have breasts?

A No, I do not. To me that just serves as a reminder of what I don't have and it sucks.

Q As you sit here today, do you currently have any plans of any type of future surgery?

A No. I find looking -- I have looked through doctors, and I find that the thought of getting another surgery makes my stomach turn.

Q Did you ever discuss Dr. Chin's care and treatment with your current therapist, Melissa?

- Fox Varian -

A Yeah.

Q What have you discussed with her?

A How it was done improperly. How when I saw the pictures that Dr. Chandler took of, you know, after like her, her pre-op photos, I literally had no memory of my chest looking like that. That I started sobbing when I saw them. Stuff like that.

Q Has any medical provider ever told you that Dr. Chin's surgery was performed improperly?

A No. I think you can tell just by looking at it.

Q Have you discussed with Melissa how you would feel about a further surgery?

A Yes. Yes, I think so.

Q Has Melissa given you any diagnoses?

A No.

Q Have you attended any school program or academic programs that we didn't discuss at your last deposition?

A No.

- Fox Varian -

Q The program that you attended in Mahopac, do you recall the name of that program?

A Mahopac Falls, I believe. Like I said, I was there under two weeks.

Q Have you ever seen any type of school psychologist other than Matthew Harris?

A I guess, yeah.

Q Do you recall the names of any of the school psychologists that you've seen?

A Not the names, no.

Q Can you tell me where you saw the school psychologist?

A I think there was a guy at Brewster who did some testing, I want to say his name was Thomas something or something. I don't remember really.

Q Do you recall seeing a school psychologist at any other schools other than Oasis and Brewster.

A I guess I would have seen the psychologist at Mahopac Falls but I'm --

- Fox Varian -

I'm not entirely sure who that would have been.

Q That's fine, it's only what you remember.

Q Have you completed your answer?

A Yes.

Q When you went for the gender therapy in Albany, did anyone accompany you?

A I mean, my mom took me.

Q Did you go with a friend or someone to the therapy in Albany?

A No. Like I said, my mom took me, that was the only person.

Q Have you seen any other type of mental healthcare provider that we haven't had an opportunity to discuss either today or at your last deposition?

A No.

Q Currently as you sit here today do you have any plans to seek out treatment from any other type of mental healthcare provider?

A No.

- Fox Varian -

Q Apart from any type of social media accounts, do you have any type of IMBd account or website?

A I think I might have IMBd, I'm not sure. I have no, like, I didn't set it up. I don't know how that works.

Q Do you have any website that you created yourself?

A I don't have any websites, no.

Q At your last deposition you had indicated there was a period of time where you were cutting. Can you tell me which portion of your body that you were cutting?

A My arm.

Q Is your arm the only portion of your body that you were harming?

A Yes. Unless you count my chest as self-harm.

MS. RUOCCO: Thank you, Fox. I have no further questions. I'm sorry we weren't able to get this done last week.

MS. KATZ: I just have a few follow-up questions.

- Fox Varian -

EXAMINATION CONDUCTED BY MS. KATZ:

Q Just in regard to the cutting, when did that begin?

A I think it was November 2021.

Q Did you ever engage in cutting prior to your top surgery?

A Yeah, I think I -- well, no. No, I didn't actually cut myself.

Q You just thought about it?

A Yes.

Q Other than cutting, I know you mentioned that you had told various people that you were going to kill yourself if you did not get the top surgery. Did you actually have thoughts of killing yourself?

A Not anything in depth. I just kind of felt like I wanted to die, yeah, and I wanted to die and I felt like I was going to eventually kill myself if I didn't get it. And I, you know, was never challenged in that belief.

Q When you say you were never challenged, you mean you were never challenged by your mom or any therapists?

- Fox Varian -

A I guess my mom did try to say like, come on, I don't -- like, is that really true? Like, why would you feel that way? But not by any professional, certainly.

Q When your mom challenged you, what was your response?

A I would get very upset and just say, like, yes, I, you know, I'm miserable, I feel like -- I felt like my life couldn't start, I guess, in a way. Like I was just going to be miserable for a while, or until I killed myself or got the surgery. Which was a very maladaptive way of thinking..

Q Was there ever any discussions with your mom about, during that time period, about trying, like, antidepressants or something as an alternative?

A I don't remember.

Q What about Dr. Einhorn, he suggested that you try antidepressants; is that correct?

A Probably, yes.

Q Why is it that you did not want

to try that?

A Because I felt like it wouldn't, like, address the root issue, because I was being told that the root issue of my depression, that all the issues that I had previously, the eating disorder, were a result of this sort of like, I guess, latent gender dysphoria that I was experiencing.

Q When you say you were being told that, who told you that?

A Dr. Einhorn.

Q Anyone else?

A No.

Q Did Dr. Einhorn tell you, suggest to you that you see a psychiatrist?

A I don't really remember.

MS. KATZ: I have no further questions. Thank you.

For the record, just, defendants again reserve our right to a further deposition of the plaintiff upon receipt of her medical records which we have not

yet received including her current therapy records and actually her prior therapy records and hospitalization records as well.

MS. RUOCCO: We join.

THE REPORTER: Valerie, are you ordering a copy of the transcript?

MS. RUOCCO: Of course, yes.

oOo

(Time noted: 11:25 a.m.)

STATE OF NEW YORK)
ss:
COUNTY OF WESTCHESTER)

I, FOX VARIAN, the witness herein, having read the foregoing testimony of the pages of this remote deposition, do hereby certify it to be a true and correct transcript, subject to the corrections, if any, shown on the attached page.

o0o

FOX VARIAN

Subscribed and sworn to before me
this day of , 2023.

STATE OF NEW YORK)
) ss
COUNTY OF PUTNAM)

I, Christy J. Rockower, Notary Public within and for the State of New York, do hereby certify:

That I reported the remote proceedings in the within entitled matter, and that the within transcript is a true record of said proceedings.

I further certify that I am not related to any of the parties to the action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 21st day of December 2023.

Christy J. Rockower
CHRISTY J. ROCKOWER,
NOTARY PUBLIC

I N D E X

PAGE#

EXAMINATION BY:

BY MS. RUOCCO 214
BY MS. KATZ 224

DOCUMENT/DATA REQUESTED:

NONE

PLAINTIFF'S EXHIBITS:

NONE

DEFENDANT'S EXHIBITS:

NONE

RULINGS CONTEMPLATED:

NONE

CORRECTION SHEET

Re: Varian vs. Kenneth Einhorn, PhD.

The following corrections, additions or deletions were noted on the transcript of the testimony which I gave in the above-captioned matter, held on 12/7/23.

PAGE(S)	LINE(S)	SHOULD READ
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FOX VARIAN

Subscribed and sworn to before me this day of 2023.

ATTORNEY'S NOTES

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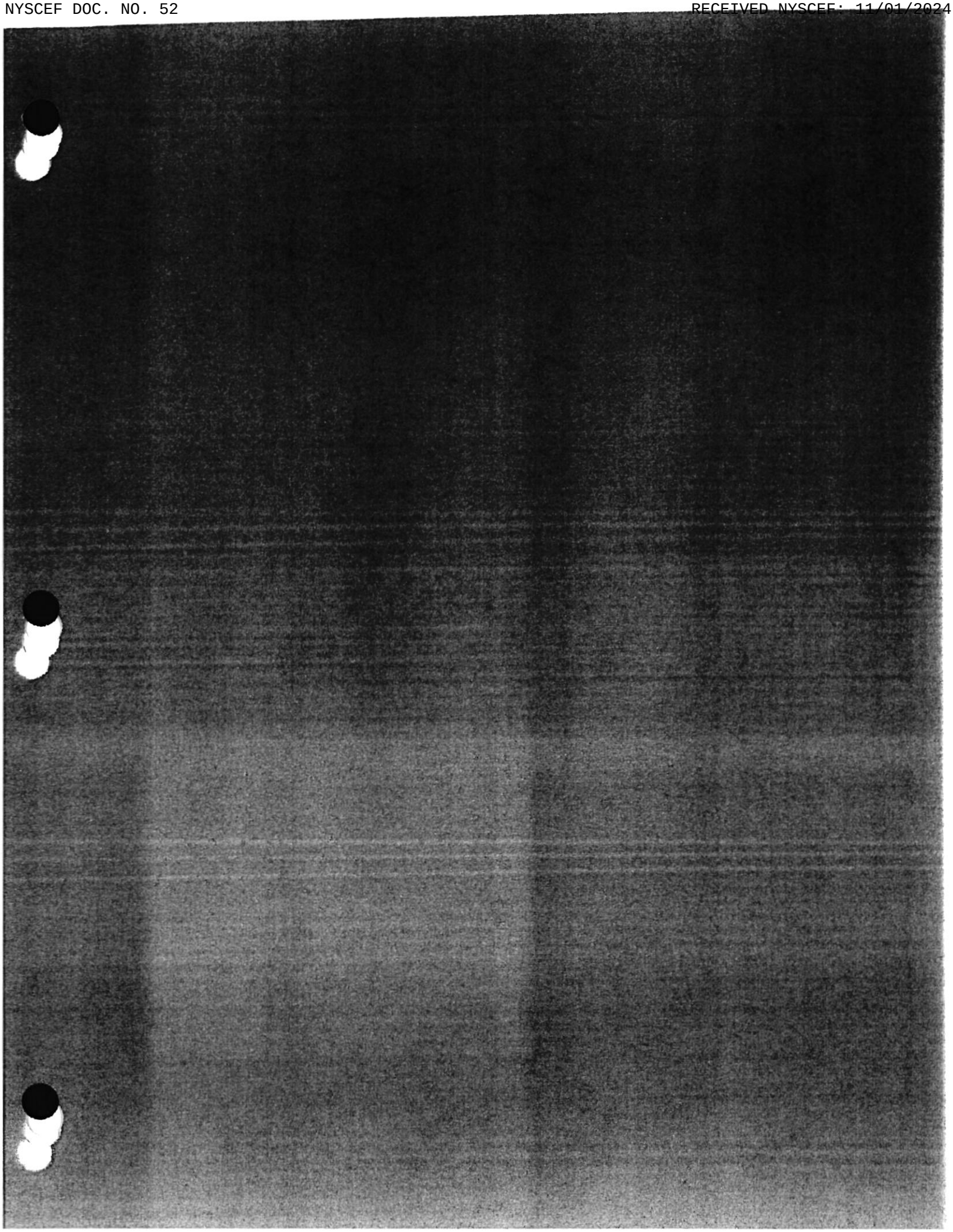
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